

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWEST AIRLINES CO.,

Plaintiff,

v.

ROUNDPIPE, LLC, CHASE ROBERTS, AND PAVEL
YUREVICH,

Defendants.

Civil Action No: _____

Jury Trial Demanded

ORIGINAL COMPLAINT

Plaintiff Southwest Airlines Co. (“Southwest”) files this complaint in order to protect its valuable property and online distribution system from the unauthorized activities of Defendants Roundpipe, LLC, Chase Roberts, and Pavel Yurevich (collectively, “Defendants”) which have operated a website “Southwest Monkey”. Based upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other persons and matters, Southwest alleges as follows:

NATURE OF THE ACTION

1. Southwest seeks injunctive relief and monetary damages against Defendants based on their unauthorized use of Southwest's website in connection with Defendants’ operation of a business in which they, without Southwest's permission, use automated tools to improperly obtain online fare data. Defendants’ unlawful activities include breach of contract, Unfair Competition in Violation of 15 U.S.C. § 1125(A), Dilution of a Famous Mark, Tarnishment of a Famous Mark, violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030(a)(2)(C), and violation of Texas Penal Code § 33.02. As a result, Southwest has suffered, is

suffering, and unless permanent relief is entered by this court, ongoing harm due to Defendants' conduct alleged herein.

PARTIES

2. Plaintiff Southwest Airlines Co. is a Texas corporation with its principal place of business in this District, at 2702 Love Field Drive, Dallas, Texas 75235.

3. Upon information and belief, Roundpipe is a Utah limited liability company with its principal place of business in Salt Lake City, Utah. Its sole member is Chase Roberts, an individual residing in Salt Lake City, Utah. It may be served with process by serving its registered agent Wasatch-IP at 2835 E. Cottonwood Parkway, Suite 500, Salt Lake City, UT 84121.

4. Defendant Chase Roberts is a resident of the State of Utah, whose current place of residence is 268 H Street Salt Lake City, UT 84103.

5. Defendant Pavel Yurevich is a resident of the State of Washington, whose current place of residence is 8808 Redmond Woodinville Rd NE Apt C202, Redmond, WA 98052-7614.

JURISDICTION

6. This Court has subject matter jurisdiction over the federal statutory claim in this action pursuant to 28 U.S.C. § 1331.

7. This Court also has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

8. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the laws of the State of Texas pursuant to 28 U.S.C. § 1367(a), because the state law

claims are so related to the federal claims that they form a part of the same case or controversy and derive from a common nucleus of operative facts.

9. This Court has personal jurisdiction over Roundpipe because it is a foreign or domestic corporation that committed torts in this District, breached a contract entered into in this District, violated Texas statutory law in this District. Roundpipe knew that serious harmful effects from its conduct would occur in this District.

10. This Court has personal jurisdiction over Chase Roberts because he is a Utah resident who has intentionally committed acts that were aimed to breach a contract and cause tortious injury within this District. The injuries that Chase Roberts inflicts on Southwest as a result of his unlawful conduct are felt in this District, and he knew that serious harmful effects from his conduct would occur here.

11. This Court has personal jurisdiction over Pavel Yurevich because he is a Washington resident who has intentionally committed acts that were aimed to breach a contract and cause tortious injury within this District. The injuries Pavel Yurevich inflicts on Southwest as a result of his lawful conduct are felt within this District, and he knew that serious harmful effects from his conduct would occur here.

12. Upon information and belief, Defendants have purposefully availed themselves to the forum by entering into one or more contracts with residents of the State of Texas, knowing that it would receive commercial gain through such contracts.

13. Upon information and belief, Defendants knew that the injury from its unlawful acts would be felt primarily by Southwest in this District, where Southwest is incorporated and headquartered.

14. Moreover, in order to perpetrate the wrongful acts alleged in this complaint, Defendants regularly accessed Southwest's computer servers and websites, many of which are located in this District.

15. Through its website at www.southwest.com, (the "Southwest Website"), Southwest includes the Terms and Conditions that govern the use of, and access to, the Southwest Website which requires Defendants to submit to the jurisdiction of the courts within Dallas, Texas.

VENUE

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. The claims asserted in this action arose in this District and a substantial part of the activities, conduct, and damages have occurred in Texas.

17. Venue is also proper in this Court because Defendants directed commercial activity to residents of Texas, including residents of this District.

FACTS GIVING RISE TO THIS ACTION

A. Southwest's Operations and Valuable Famous Trademarks

18. Southwest prides itself on being the nation's largest domestic air carrier by providing its customers with low fares and legendary hospitality. Since its creation in 1971, Southwest has grown from an intrastate airline operating within Texas to the nation's largest domestic air carrier that operates over 4,000 flights per day and enplanes more than 152 million passengers per year

19. Southwest is headquartered in Dallas and conducts substantial business operations throughout the state of Texas.


20. In the highly competitive airline industry, Southwest has been successful, due in large measure to Southwest's commitment to customer service and consumer loyalty. In the more than forty years that Southwest has been offering air transportation services, it has developed a substantial amount of goodwill with its customers.

21. Through Southwest's long and successful efforts, Southwest's registered trade and service marks have earned extensive goodwill, favorable recognition, and an international reputation for high-quality products and services.

22. Southwest offers and sells its goods and services under and in conjunction with, among others, the following SOUTHWEST and SWA-related trademark and service mark registrations in the United States (collectively, the "SOUTHWEST Marks"):

Reg. No. ¹	Mark	Registration Date	Registration Certificate
1,738,670*	SOUTHWEST AIRLINES	December 8, 1992	Exhibit A
3,129,737*	SOUTHWEST	August 15, 2006	Exhibit B
4,670,508	SOUTHWEST CARGO	January 13, 2015	Exhibit C
2,313,710*	SWA	February 1, 2000	Exhibit D
4,024,786*	SOUTHWEST AIRLINES CARGO	September 13, 2011	Exhibit E
3,011,430*	SWABIZ	November 1, 2005	Exhibit F
4,537,010	SWABIZ MEETINGS	May 27, 2014	Exhibit G
4,033,508*	SWACARGO.COM	October 4, 2011	Exhibit H
2,623,807*	SOUTHWEST.COM	September 24, 2002	Exhibit I
4,331,036	SOUTHWEST VACATIONS	May 7, 2013	Exhibit J

¹ Registrations denoted with an "*" are incontestable.

Reg. No. ¹	Mark	Registration Date	Registration Certificate
4,770,643		July 7, 2015	Exhibit K
4,720,322		April 14, 2015	Exhibit L
5,149,729		February 28, 2017	Exhibit M

23. These registrations, many of which issued on the Principal Register, are in full force and effect.

24. The validity of several registrations is incontestable pursuant to 15 U.S.C. § 1065 as they have been registered and in continuous use for more than five years. As such, Southwest is the undeniable owner of the registered marks with the exclusive right to use the marks with the registered goods and services.

25. The SOUTHWEST Marks serve as unique and famous source identifiers for Southwest and its various goods and services.

26. Southwest has invested millions of dollars in advertising and marketing to build the fame, reputation, and goodwill of the SOUTHWEST Marks, both in the United States and internationally. Southwest advertises through a variety of media, including the Internet, television, radio, newspapers, magazines, and direct mail.

27. Through Southwest's longstanding use and promotional activities related to the SOUTHWEST Marks, and due to the widespread and favorable public acceptance and

recognition of those marks, the SOUTHWEST Marks have become a unique distinctive designation of the source of origin of Southwest's goods and services.

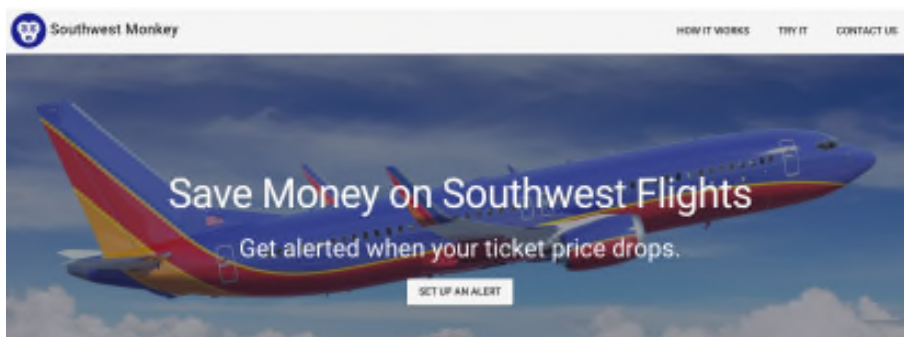
28. The SOUTHWEST Marks are assets of incalculable value as symbols of its high-quality goods and services, and its goodwill.

29. By virtue of its extensive use and promotion over the years, the SOUTHWEST Marks have developed valuable distinctiveness and secondary meaning in the marketplace. These Marks have attained a significant and lasting presence in the marketplace, causing the Marks to achieve high recognition and value among consumers.

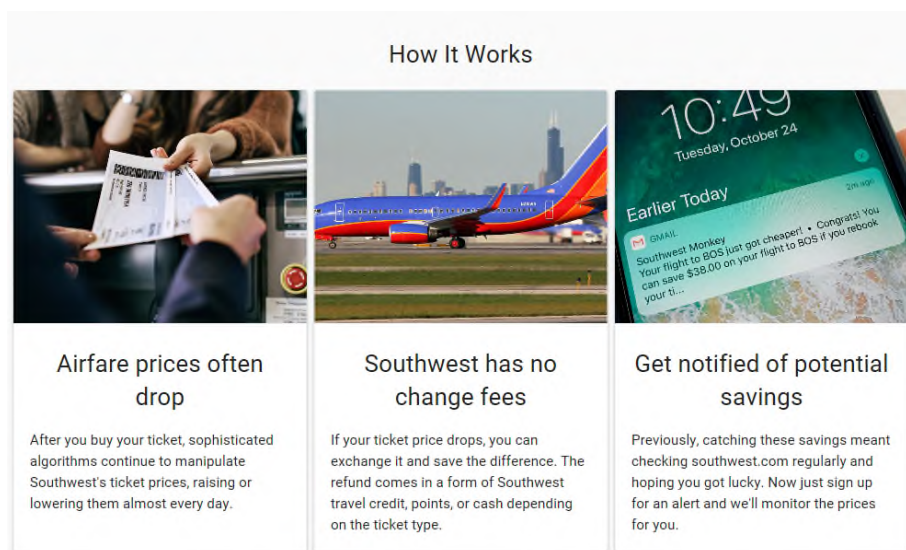
30. Other than Southwest and its authorized affiliates, licensees, and partners, no one is permitted to use any of the SOUTHWEST Marks for commercial gain.

31. Defendants are not authorized to use any of the SOUTHWEST Marks.

32. On November 8, 2017, Southwest contacted the Defendants about their website's improper usage of the SOUTHWEST Marks. *See Exhibit N*. An example of such improper usage is shown below:



33. Despite such notice, the unauthorized usage of the marks continues to occur on the Defendants' website, as shown below:



B. Southwest's Online Customer Service

34. Southwest has developed and maintains a privately-owned computer system located in this District, which includes the Southwest Website and numerous supporting servers, databases, routers, networks, bandwidth, cabling, appliances, switches, filters and firewalls (collectively referred to as "Southwest Systems"). Through the Southwest Website, Southwest provides fare, route, schedule, and availability data to its actual and potential customers in an interactive format. Southwest has invested substantial time and money in developing, compiling and maintaining its proprietary computer system and website.

35. To preserve its standards of customer service, reputation, and goodwill, Southwest maintains the exclusive online distribution rights to sell Southwest flights or ancillary service to the general public through the Southwest Website.

C. Southwest and the Terms & Conditions Governing Its Web site

36. Southwest makes its websites and the proprietary contents available for consumers' use subject to certain terms and conditions of use that make it clear that the systems and data displayed thereon is proprietary and owned by Southwest (the "Use Agreement"). *See*

Exhibit O. The Use Agreement is referenced by interactive link on each page of the Southwest Websites.

37. The home page of the Southwest.com website as well as the Use Agreement conspicuously state that use of the website constitutes acceptance of Southwest's Use Agreement. Through the completion of a flight purchase on the Southwest Website, the Use Agreement is also referenced on every website page shown to Southwest customers as they search, select, and purchase flights on the Southwest Website. *See Exhibit P.*

38. In the Preamble, the Use Agreement defines "Service" as "the information, features, content, and services that we own, control, or make available through [www.southwest.com, www.swabiz.com, and any other websites, mobile and other applications, or services that post a link to these Terms]."

39. Under the section entitled "Ownership of Company Information," the Use Agreement further defines "Company Information" as:

Information and materials concerning Southwest and its products and services, and similar items from our licensors and other third parties, including flight schedules, routes, fares, text, graphics, button icons, layout, databases, articles, posts, text, data, files, images, scripts, designs, instructions, illustrations, photographs, sounds, pictures, advertising copy, URLs, technology, software, interactive features, the "look and feel" of the Sites, audio and video clips, digital downloads, data compilations (including customer and Rapid Rewards® information), the compilation, assembly, and arrangement of the materials of the Sites, all copyrightable materials, trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Southwest, and other forms of intellectual property, and information regarding the status of Southwest flights, etc.

40. Southwest does not permit page-scraping or automated tools to access or monitor any portion of the Southwest Website, its content, and/or its underlying fare databases. Any page-scraping of the Southwest Website, its content, and/or its underlying fare database is unauthorized.

41. Under the section entitled “Restrictions and Prohibited Activities,” the Use Agreement, in relevant parts, states that “You agree that you will not:”

* * *

(ii) use the Service or Company Information for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;

* * *

(v) harvest any information from the Service;

* * *

(viii) interfere with the proper operation of or any security measure used by the Service;

* * *

(xiv) use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information;

(xv) use the Service in any way which depletes web infrastructural resources, slows the transferring or loading of any web page, or interferes with the normal operation of the Sites;

(xvii) disguise the origin of information transmitted to, from, or through the Service;

(xviii) circumvent any measures implemented by Southwest aimed at preventing violations of the Terms. You may not violate the restrictions in any robot exclusion header; or

(xix) otherwise violate these Terms or any applicable Additional Terms.

42. Under the section entitled “Forum Selection,” the Use Agreement further states in clear bold text that:

These Terms and the relationship between you and Southwest shall be governed by the laws of the State of Texas without regard to any conflict of law provisions. You agree to the personal and exclusive jurisdiction of the courts located within Dallas, TX. You hereby consent to the exclusive jurisdiction and venue of the State and Federal courts in Dallas, Texas in all disputes. You agree and understand that you will not bring against the Southwest Parties any class action lawsuit related to your access to, dealings with, or use of the Service.

43. Southwest's opposition to scraping, or any unauthorized access of its websites is well known, as it has pursued litigation to stop unauthorized access of the Southwest Website or Southwest Systems in the past. *See, e.g., Southwest Airlines Co. v. BoardFirst, L.L.C.*, No. 3:06-CV-0891-B, 2007 WL 4823761 (N.D. Tex. Sept. 12, 2007) and *Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435 (N.D. Tex. 2004).

D. Defendants' Wrongful Conduct

44. On or about November 6, 2017, Defendants launched a website called "Southwest Monkey" at www.swmonkey.com that obtained Southwest's proprietary data through use of automated scraping devices to enter and search the Southwest Website and/or Southwest Systems, and extract, at least, proprietary fare data.

45. Defendants enter and use the Southwest Website by engaging in and/or directing, controlling, or procuring an activity commonly referred to as "page-scraping" or "crawling," or the use of a "robot" or "spider."

46. Defendants described its scraping tool as a program designed to check Southwest's proprietary fare data on an automated basis and provide text message to customers in the event of a decrease in fare price.

47. Defendants have advertised that their automated tools scrape proprietary fare data from the Southwest Website and have provided their paid alerts to consumers upon payment of a \$3 fee if the fare price drops more than \$10.

48. The imposition of additional fees causes damage to Southwest's goodwill and reputation by creating the false impressions that Southwest fares are not clear and transparent.

49. Defendants' scraping activity causes substantial traffic through the Southwest Website and Southwest System, all while Defendants have no intention of booking tickets for travel.

50. Defendants' activities and use of Southwest's property data was intentional and knowingly done without Southwest's consent and in violation of the Use Agreement.

51. Southwest does not endorse or approve of Defendants' products or services. Defendants' access and use of the Southwest Websites is without authorization and in violation of the Use Agreement. Defendants, however, trade off Southwest's goodwill, reputation and the value of its services to the traveling public, likely giving Defendants' customers or potential customers the false impression that there is a business relationship between Southwest and Defendants.

52. Defendants' scraping of Southwest's fare data also causes substantial harm to Southwest's business through loss of business opportunity. A customer who receives an alert through Defendants' website does not need to visit the Southwest website, and Southwest is deprived of the additional opportunities to interact with potential and existing customers and sell additional services or generate goodwill.

53. Southwest's proprietary fares and its website resources have substantial commercial value. Therefore, it is highly probable that—in the absence of an injunction prohibiting Defendants' unauthorized conduct—even more companies will target and use the Southwest Websites for their own business purposes, without Southwest's consent and to its detriment.

54. On information and belief, soon after Defendants launched the "Southwest Monkey" website, they also took affirmative steps to contact online travel bloggers in an attempt

to obtain media coverage. Through this process, Defendants became aware of the terms and conditions in the Use Agreement that governs the Southwest Website.

55. Upon information and belief, as early as November 6, 2017, one travel blogger informed the Defendants that Southwest did not approve of the operation of fare-scraping websites and that it violated the Use Agreement. *See Exhibit Q.* (Deals We Like November 6 Blog Post).

56. Upon information and belief, the same blogger later noted that:

“When I found out about this [Southwest Monkey] site, I actually told the founder that I would not promote it without his permission. I explained that similar sites have been shut down in the past, and told him that within a few days of me writing I can almost guarantee a cease and desist letter. The founder still wanted me to write about it regardless.”

See Exhibit R (Deals We Like - November 22 Blog Post).

57. Defendants admitted to having actual knowledge that a fare-scraping website like Southwest Monkey would violate the Use Agreement. According to a media interview, Pavel Yurevich had actual knowledge of a different fare-scraping website known as Dragon Fare that had ceased operation after receipt of a cease and desist letter from Southwest but persisted because “Maybe they [Dragon Fare Scanner] just got really intimidated by Southwest ... [b]ut we won’t.” *See Exhibit S* (December 1, 2017 Outline Article).

58. On November 10, 2017, Southwest sent a Cease and Desist informing Defendants that “Southwest Monkey” violated the Use Agreement and demanded Defendants immediately stop: “(1) extracting or scraping Southwest’s flight and fare information from its proprietary servers and websites; and (2) publishing this information on the Southwest Monkey website, through related web applications, or elsewhere.” *See Exhibit T* (November 10, 2017 Cease and Desist Email).

59. Upon receipt of the November 10 letter, Defendants became fully aware of the terms and conditions of Use Agreement and were bound the provisions therein. Despite receiving the November 10 letter, Defendants continued operation of their fare-scraping tool that was advertised through Southwest Monkey.

60. On November 15, 2017, Southwest sent a second Cease and Desist Letter demanding that Defendants terminate the unlawful service immediately. *See Exhibit U* (November 15, 2017 Cease and Desist Letter).

61. Defendants publically admitted to receiving this letter and further understood that those terms and conditions, in the Use Agreement, explicitly prohibited the use of the automated tools. *See Exhibit V* (Defendants' November 16, 2017 Blog Post).

62. Upon receipt of the November 15 letter, Defendants became further aware of the terms and conditions of Use Agreement and were bound the provisions therein. Despite receiving the November 10 letter and November 15 letters, Defendants continued operation of their fare-scraping tool that was advertised through Southwest Monkey.

63. In violation of the Use Agreement, Defendants did not cease the use of its automated scraping tool until November 28, 2017. *See Exhibit W* (Defendants' November 28, 2017 Blog Post).

64. Upon information and belief, Defendants intend to resume operation of the automated scraping tool as third parties have reported that, "[Defendants] still really want to make this work and will try to get something together that is not against Southwest's terms." *See Exhibit R* (Deals We Like - November 22 Blog Post).

65. Upon information and belief Defendants intend to and will continue to market, advertise, and sell its unauthorized fare checking service to residents in this District.

66. On or about November 24, 2017, Defendants modified the Southwest Monkey website to include a notice to its website visitors about how to create a similar automated tool program.

67. Southwest has spent considerable resources to find, detect, and block access to the Southwest Website by the Defendants. Those resources have included and continue to include the diversion of Southwest employees from their usual duties, along with costs paid to third parties.

COUNT I
BREACH OF CONTRACT

68. Southwest repeats and realleges the allegations in the preceding paragraphs.

69. The Use Agreement is a valid and enforceable agreement binding on Defendants.

70. Defendants have used the Southwest Website and/or Southwest Systems.

71. Upon Defendants' use of the Southwest Website and/or Southwest Systems, Defendants agreed to be bound by the Use Agreement.

72. Defendants were further informed of the Use Agreement as early as November 6, 2017, but persisted in violating the Use Agreement.

73. Defendants have breached the Use Agreement.

74. For example, Defendants breached the Use Agreement by providing an unauthorized automatic fare-checking service that accesses the Southwest Website and/or Southwest System, and Defendants use an automatic fare-checking service for commercial purposes and gain, without authorization by Southwest.

75. Southwest has been and will continue to be damaged as the result of Defendants' breach of the Use Agreement.

76. In addition, Southwest has suffered and will continue to suffer irreparable harm and its remedy at law is not itself adequate to compensate it for injuries inflicted by Defendants. Accordingly, Southwest is entitled to injunctive relief and damages.

COUNT II
UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(A)

77. Southwest repeats and realleges the allegations in the preceding paragraphs.

78. Defendants' intentional and unauthorized use in commerce of the SOUTHWEST Marks is likely to cause confusion, mistake or deception among the consuming public as to the source or origin of Defendants' service and/or as to Southwest's affiliation with, endorsement of, or sponsorship of Defendants' services.

79. Defendants' continued, unauthorized use of the well-known and famous SOUTHWEST Marks has been done with intent to trade upon the goodwill and reputation of Southwest. Accordingly, Defendants' actions constitute willful infringement and unfair competition in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. 1125(a).

80. As a result of the foregoing, Southwest has been damaged in an amount that will be ascertained according to proof. In addition to Southwest's actual damages, Southwest is entitled to receive Defendants' profits pursuant to 15 U.S.C. § 1117(a). These actual damages and profits should be enhanced because Defendants' conduct described above is willful.

81. In addition, Southwest has suffered and will continue to suffer losses and irreparable injury to its business reputation and goodwill. Defendants are likely to continue to engage in activities in violation of 15 U.S.C. § 1125(a) and unless restrained and enjoined will continue to do so, all to Southwest's irreparable injury. Southwest's remedy at law is not by itself

adequate to compensate it for the injuries inflicted and threatened by Defendants. Accordingly, Southwest is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

82. Southwest is also entitled to recover its attorneys' fees and costs pursuant to 15U.S.C. § 1117.

COUNT III
DILUTION OF A FAMOUS MARK

83. Southwest repeats and realleges the allegations in the preceding paragraphs.

84. Defendants have and are engaged in acts constituting dilution in violation of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

85. Defendants have made commercial use of the SOUTHWEST Marks with the willful intent to trade on Southwest's reputation and to cause dilution of those famous Marks.

86. Defendants' use of the SOUTHWEST Marks began long after those marks and names had become well-known and famous.

87. Defendants' use of the SOUTHWEST Marks causes dilution of their distinctive quality.

88. Defendants' use of the SOUTHWEST Marks lessens their capacity to identify and distinguish Southwest's goods, services, and customers.

89. Defendants have used the SOUTHWEST Marks with full knowledge of Southwest's long prior rights in those Marks and the fame of those Marks.

90. Defendants' use of the SOUTHWEST Marks represents a deliberate intent and bad-faith purpose to trade upon the goodwill of those Marks and/or to dilute the distinctive quality of those Marks, to blur and diminish the distinctive qualities of those Marks, and/or to lessen those Marks' capacity to identify and distinguish the goods and services of Southwest.

91. Defendants' activities complained of herein constitute dilution within the meaning of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

92. Defendants' acts have irreparably damaged, impaired, and diluted Southwest's goodwill and good name. Southwest has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Southwest further immediate and irreparable damage.

COUNT IV
TARNISHMENT OF A FAMOUS MARK

93. Southwest repeats and realleges the allegations in the preceding paragraphs

94. Defendants' use of the SOUTHWEST Marks creates an undesirable, unwholesome, and unsavory association with Southwest and its reputation.

95. Defendants' use of the SOUTHWEST Marks is grossly inconsistent with the image and goodwill cultivated by Southwest through and in relation to the use of the SOUTHWEST Marks.

96. Defendants' activities complained of herein constitute tarnishment, a special form of dilution within the meaning of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

97. As a result of Defendants' acts, Southwest has suffered and continues to suffer and incur irreparable, injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Southwest further immediate and irreparable damage.

COUNT V
COMPUTER FRAUD AND ABUSE IN VIOLATION OF 18 U.S.C. § 1030

98. Southwest repeats and realleges the allegations in the preceding paragraphs.

99. Southwest has suffered loss of at least five thousand dollars (\$5,000) in value during a one-year period.

100. Southwest's computers, on which the Southwest Website, the Southwest Systems, and Southwest's fare data resides, are involved in interstate commerce and communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

101. Upon information and belief, Defendants have intentionally accessed and continues to access Southwest's computers without authorization or in excess of authorized access, and through interstate communication, obtained information from Southwest's computers in violation of the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a)(2)(C).

102. Defendants' unauthorized access of a protected computer has caused damage and is continuing to cause damage to Southwest, including loss arising from the cost of responding to and investigating Defendants' unauthorized access, which has amounted in an aggregated loss of at least \$5,000 during a one-year period.

103. Defendants' conduct has harmed and will continue to harm Southwest. As a result, Southwest has suffered and will continue to suffer losses and irreparable injury, in amounts not yet ascertained.

104. Southwest's remedy at law is not itself adequate to compensate it for injuries inflicted by Defendant.

105. Under 18 U.S.C. § 1030(g), Southwest is entitled to compensatory damages and injunctive or other equitable relief.

COUNT VI
VIOLATION OF TEXAS PENAL CODE § 33.02

106. Southwest repeats and realleges the allegations in the preceding paragraphs.

107. Defendants knowingly, and without Southwest's effective consent, accessed and continues to access Southwest's computers, computer network or computer system.

108. Southwest, and its property, have been and will continue to be damaged as the result of Defendants' violation of the Texas Penal Code.

109. Pursuant to § 143.001 of the Texas Civil Practice and Remedies Code, Defendants' knowing and intentional violation of Texas Penal Code § 33.02 makes Defendants liable for the harmful access of the Southwest Website and/or Southwest Systems.

110. Southwest has suffered and will continue to suffer irreparable harm, and its remedy at law is not itself adequate to compensate it for injuries inflicted by Southwest. Accordingly, Southwest is entitled to injunctive relief and damages.

ATTORNEYS' FEES

111. Southwest has been required to retain the services of the undersigned attorneys in the prosecution of this claim. Pursuant to Sections 38.001 and 143.002 of the Texas Civil Practice and Remedies Code, Southwest seeks to recover its reasonable attorneys' fees and costs necessarily expended in prosecuting this matter.

EXEMPLARY DAMAGES

112. Defendants' misconduct, described above, has been willful, intentional, and malicious, and Southwest seeks exemplary damages.

PRAYER FOR RELIEF

For these reasons, Southwest respectfully requests that this Court grant the following relief:

- a. Adjudge that Defendants have breached the express terms of Southwest's Use Agreement regarding use of the Southwest Website;

- b. Adjudge that Defendants have induced other users to breach their contract with Southwest for use of the Southwest Website;
- c. Adjudge that Defendants have violated 18 U.S.C. § 1030;
- d. Adjudge that Defendants have violated 15 U.S.C. § 1125(c);
- e. Adjudge that Defendants have intentionally violated § 33.02 of the Texas Penal Code, rendering them liable under § 143.001 of the Texas Civil Practice and Remedies Code;
- f. Issue permanent injunctive relief against Defendants, that it and its officers, agents, representative, servants, employees, attorneys, successors, assigns, and any and all others in active concert or participating with it, be enjoined from:
 - i. using the Southwest Website or any Southwest website for the purpose of checking fares for Southwest customers in violation of the Use Agreement;
 - ii. accessing the Southwest Website and/or Southwest Systems in violation of 18 U.S.C. § 1030;
 - iii. breaching or inducing others to breach of any of the terms and conditions in the Use Agreement for the Southwest Website, Southwest Systems, or any other website owned, operated by, or affiliated with Southwest;
 - iv. accessing, without effective consent, the Southwest System or computer network in violation of Section 33.02 of the Texas Penal Code; and

- v. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iv) above.
- g. Award Southwest damages as a result of Defendant breaching its contract with Southwest for use of the Southwest Website and/or Southwest Systems;
- h. Award Southwest damages as a result of Defendants inducing other users to breach their contract in the Use Agreement with Southwest for use of the Southwest Website and/or Southwest Systems
- i. Award Southwest damages as a result of Defendants' unauthorized access of Southwest's computer system in violation of 18 U. S.C. § 1030
- j. Award Southwest damages as a result of Defendants' violation(s) of § 33.02 of the Texas Penal Code;
- k. Award Southwest damages and Defendants' profits pursuant to Texas common law for breach of contract;
- l. Award Southwest damages in an amount adequate to compensate Southwest for Defendants' illegal conduct;
- m. Award Southwest both the costs of this action and the reasonably attorneys' fees incurred by it in prosecuting this action; and
- n. Award such other relief as the Court may deem appropriate and just under the circumstances.

Dated: January 5, 2018

POLSINELLI PC

By: /s/Michael D. Pegues
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ATTORNEYS FOR PLAINTIFF
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EXHIBIT A

Int. Cl.: 39

Prior U.S. Cl.: 105

United States Patent and Trademark Office **Reg. No. 1,738,670**
Registered Dec. 8, 1992

**SERVICE MARK
PRINCIPAL REGISTER**

SOUTHWEST AIRLINES

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
8008 AVIATION PLACE
LOVE FIELD, DALLAS, TX 75235

FOR: TRANSPORTATION SERVICES;
NAMELY, TRANSPORTATION OF CARGO
AND PASSENGERS BY AIR, IN CLASS 39 (U.S.
CL. 105).

FIRST USE 6-8-1971; IN COMMERCE
2-7-1980.

OWNER OF U.S. REG. NOS. 1,230,381 AND
1,486,485.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "AIRLINES", APART FROM
THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 74-219,135, FILED 11-5-1991.

AMOS T. MATTHEWS, JR., EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 3,129,737

Registered Aug. 15, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

SOUTHWEST

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)

2702 LOVE FIELD DRIVE

DALLAS, TX 75235

FOR: TRANSPORTATION OF PASSENGERS
AND/OR GOODS BY AIR, IN CLASS 39 (U.S. CLS.
100 AND 105).

FIRST USE 2-28-1985; IN COMMERCE 2-28-1985.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,230,381, 2,623,807
AND OTHERS.

SEC. 2(F).

SER. NO. 78-710,103, FILED 9-9-2005.

RICHARD A. STRASER, EXAMINING ATTORNEY

EXHIBIT C

United States of America

United States Patent and Trademark Office

SOUTHWEST CARGO

Reg. No. 4,670,508

Registered Jan. 13, 2015

Int. Cl.: 39

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)

IIDQ 4GC

2702 LOVE FIELD DRIVE

DALLAS, TX 75235

FOR: AIR FREIGHT SHIPPING SERVICES; AIR TRANSPORT SERVICES; CARGO HANDLING; DELIVERY OF GOODS BY AIR, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 11-1-2001; IN COMMERCE 11-1-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,129,737, 4,027,740 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CARGO", APART FROM THE MARK AS SHOWN.

SER. NO. 86-279,000, FILED 5-12-2014.

MARK T. MULLEN, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT D

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

Reg. No. 2,313,710

United States Patent and Trademark Office

Registered Feb. 1, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

SWA

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
2702 LOVE FIELD DRIVE
P.O. BOX 36611
DALLAS, TX 75235

FIRST USE 1-1-1998; IN COMMERCE 1-1-1998.
OWNER OF U.S. REG. NOS. 1,738,670 AND
2,115,622.

FOR: TRANSPORTATION OF PASSENGERS AND
PARCELS BY AIR, IN CLASS 39 (U.S. CLS. 100 AND
105).

SER. NO. 75-566,151, FILED 10-7-1998.

PAM WILLIS, EXAMINING ATTORNEY

EXHIBIT E

United States of America

United States Patent and Trademark Office

Southwest Airlines Cargo

Reg. No. 4,024,786

Registered Sep. 13, 2011

Int. Cl.: 39

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)

HDQ 4GC

2702 LOVE FIELD DR.

DALLAS, TX 75235

FOR: AIR FREIGHT SHIPPING SERVICES; AIR TRANSPORT SERVICES; CARGO HANDLING; DELIVERY OF GOODS BY AIR, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 2-14-1997; IN COMMERCE 2-14-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,738,670, 3,129,737 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AIRLINES CARGO", APART FROM THE MARK AS SHOWN.

SER. NO. 85-031,580, FILED 5-6-2010.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

EXHIBIT F

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 3,011,430

Registered Nov. 1, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

SWABIZ

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
HDQ 4GC
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: PROVIDING INFORMATION REGARDING
TRAVEL SERVICES, IN CLASS 39 (U.S. CLS. 100
AND 105).

FIRST USE 3-1-2000; IN COMMERCE 3-1-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,313,710 AND 2,623,807.

SER. NO. 78-484,109, FILED 9-15-2004.

YSA DEJESUS, EXAMINING ATTORNEY

EXHIBIT G

United States of America

United States Patent and Trademark Office

SWABIZ Meetings

Reg. No. 4,537,010

Registered May 27, 2014

Int. Cl.: 39

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
HDDQ 46C
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: PROVISION OF TRAVEL INFORMATION, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 3-1-2013; IN COMMERCE 3-1-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,011,430, 4,139,259, AND 4,267,012.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MEETINGS", APART FROM THE MARK AS SHOWN.

SER. NO. 86-075,179, FILED 9-26-2013.

WILLIAM VERHOSEK, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT H

United States of America
United States Patent and Trademark Office

swacargo.com

Reg. No. 4,033,508

Registered Oct. 4, 2011

Int. Cl.: 39

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
HDQ 4GC
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: AIR FREIGHT SHIPPING SERVICES; AIR TRANSPORT SERVICES; CARGO HANDLING; DELIVERY OF GOODS BY AIR, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 2-21-1997; IN COMMERCE 2-21-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,738,670, 3,011,430 AND OTHERS.

SER. NO. 85-031,652, FILED 5-6-2010.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT I

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 2,623,807

Registered Sep. 24, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

southwest.com

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
2702 LOVE FIELD DRIVE
P.O. BOX 36611
DALLAS, TX 752351611

FIRST USE 6-1-1997; IN COMMERCE 6-1-1997.

OWNER OF U.S. REG. NOS. 1,631,894, 1,738,670,
AND 2,115,622.

FOR: TRAVEL AGENCY SERVICES, NAMELY,
MAKING RESERVATIONS AND BOOKINGS FOR
TRANSPORTATION; PROVIDING INFORMATION
IN THE FIELD OF TRAVEL BY MEANS OF A
GLOBAL COMPUTER NETWORK, IN CLASS 39
(U.S. CLS. 100 AND 105).

SEC. 2(F).

SER. NO. 76-213,800, FILED 2-21-2001.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

EXHIBIT J

United States of America

United States Patent and Trademark Office

Southwest Vacations

Reg. No. 4,331,036

Registered May 7, 2013

Int. Cls.: 39, 41 and 43

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
HIDQ 4GC
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: TRANSPORTATION SERVICES, NAMELY, TRANSPORTATION OF PASSENGERS BY AIR; TRANSPORTATION RESERVATION SERVICES; ARRANGING TRANSPORTATION FOR TRAVEL; TRAVEL INFORMATION SERVICES, NAMELY, PROVIDING INFORMATION FOR TRAVEL ROUTE PLANNING, TRANSPORTATION BOOKING, AND MANAGING TRANSPORTATION TRAVEL ARRANGEMENTS VIA THE INTERNET, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 12-1-2003; IN COMMERCE 12-1-2003.

FOR: PROVIDING INFORMATION ON ENTERTAINMENT, SPORTING AND CULTURAL EVENTS AND VENUES, AMUSEMENT PARKS, TOURIST ATTRACTIONS, AND RECREATIONAL ACTIVITIES; TICKET RESERVATION AND BOOKING SERVICES FOR ENTERTAINMENT, SPORTING AND CULTURAL EVENTS AND VENUES, AMUSEMENT PARKS, TOURIST ATTRACTIONS AND RECREATIONAL ACTIVITIES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 12-1-2003; IN COMMERCE 12-1-2003.

FOR: PROVIDING INFORMATION ABOUT HOTELS AND TEMPORARY ACCOMMODATIONS; MAKING HOTEL RESERVATIONS FOR OTHERS; TRAVEL INFORMATION SERVICES, NAMELY, PROVIDING INFORMATION FOR HOTEL BOOKING VIA THE INTERNET, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 12-1-2003; IN COMMERCE 12-1-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,738,670, 3,129,737 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VACATIONS", APART FROM THE MARK AS SHOWN.



Lawrence H. Smith
Acting Director of the United States Patent and Trademark Office

Reg. No. 4,331,036 SEC. 2(F).

SER. NO. 85-690,646, FILED 7-30-2012.

CHRISIE B. KING, EXAMINING ATTORNEY

EXHIBIT K

United States of America

United States Patent and Trademark Office



Reg. No. 4,770,643

Registered July 7, 2015

Int. Cl.: 39

SERVICE MARK

SUPPLEMENTAL REGISTER FIRST USE 9-9-2014; IN COMMERCE 9-9-2014.

SOUTHWEST AIRLINES CO. (TEXAS CORPORATION)
HDQ 4GC
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: AIR TRANSPORTATION OF PASSENGERS AND FREIGHT; AIRLINE TRANSPORTATION SERVICES; FREIGHT TRANSPORTATION BY AIR; TRANSPORTATION OF PASSENGERS AND/OR GOODS BY AIR, IN CLASS 39 (U.S. CLS. 100 AND 105).

OWNER OF U.S. REG. NOS. 3,297,309, 4,256,482, AND OTHERS.

THE COLOR(S) BLUE, SILVER, YELLOW, AND RED IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE COLOR BLUE ON THE FRONT AND MIDDLE BODY AND ENGINES OF THE AIRPLANE, THEN COLOR BANDS OF SILVER, YELLOW, SILVER, RED, SILVER, AND BLUE AT THE REAR OF THE AIRPLANE, AND THE COLORS YELLOW AND RED ON THE VERTICAL ENDS OF THE MAIN WINGS OF THE AIRPLANE. BLACK AND WHITE, AS THEY APPEAR IN THE MARK, REPRESENT OUTLINING AND THEN ON THE FUSELAGE, MAIN WINGS AND BACK HORIZONTAL WINGS, AND ARE NOT A FEATURE OF THE MARK. THE MATTER SHOWN IN THE DOTTED LINES IS NOT A PART OF THE MARK AND SERVES ONLY TO SHOW THE PLACEMENT OF THE MARK.



SER. NO. 86-405,968, FILED P.R. 9-25-2014; AM. S.R. 4-29-2015.

WILLIAM VERHOSEK, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

EXHIBIT L

United States of America

United States Patent and Trademark Office



Reg. No. 4,720,322

Registered Apr. 14, 2015

Int. Cl.: 39

SERVICE MARK

PRINCIPAL REGISTER

SOUTHWEST AIRLINES CO (TEXAS CORPORATION)
HIDQ 4GC
2702 LOVE FIELD DRIVE
DALLAS, TX 75235

FOR: AIR TRANSPORTATION OF PASSENGERS AND FREIGHT; AIR TRANSPORTATION SERVICES FEATURING A FREQUENT FLYER BONUS PROGRAM; AIRLINE TRANSPORTATION SERVICES; DELIVERY OF GOODS BY AIR; FREIGHT TRANSPORTATION BY AIR; MAKING RESERVATIONS AND BOOKINGS FOR TRANSPORTATION; MAKING TRANSPORTATION BOOKINGS AND RESERVATIONS FOR OTHERS BY MEANS OF A WEBSITE; ON-LINE TRANSPORTATION RESERVATION AND TRAVEL TICKET RESERVATION SERVICES; ONLINE TRANSPORTATION RESERVATION SERVICES; PROVIDING A WEBSITE FEATURING INFORMATION IN THE FIELD OF AIR TRANSPORTATION; PROVIDING AUTOMATED CHECK-IN AND TICKETING SERVICES FOR AIR TRAVELERS; TRANSPORT BY AIRCRAFT; TRANSPORT BY AIR; TRANSPORT OF PASSENGERS; TRANSPORT OF PERSONS AND GOODS; TRANSPORTATION OF PASSENGERS AND/OR GOODS BY AIR; TRAVEL AGENCY SERVICES, NAMELY, MAKING RESERVATIONS AND BOOKINGS FOR TRANSPORTATION, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 9-8-2014; IN COMMERCE 9-8-2014.

THE MARK CONSISTS OF A STYLIZED SILVER HEART WITH BLUE, RED, AND YELLOW BANDS RUNNING DIAGONALLY STARTING FROM THE TOP LEFT.

THE COLOR(S) SILVER, BLUE, RED, AND YELLOW IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 86-388,063, FILED 9-8-2014.

JOHN GARTNER, EXAMINING ATTORNEY



Nichelle K. Lee

Director of the United States
Patent and Trademark Office

EXHIBIT M

United States of America

United States Patent and Trademark Office

Southwest

Reg. No. 5,149,729

Registered Feb. 28, 2017

Int. Cl.: 39, 41, 43

Service Mark

Principal Register

Southwest Airlines Co. (TEXAS CORPORATION)
2702 Love Field Drive
HDQ 4GC
Dallas, TX 75235

CLASS 39: Air transportation of passengers and freight; air transportation services featuring a frequent flyer bonus program; airline transportation services; delivery of goods by air; freight transportation by air; making reservations and bookings for transportation; making transportation bookings and reservations for others by means of a website; online transportation reservation and travel ticket reservation services; online transportation reservation services; providing a website featuring information in the field of air transportation; providing automated check-in and ticketing services for air travelers; transport by aircraft; transport by air; transport of passengers; transport of persons and goods; transportation of passengers and/or goods by air; travel agency services, namely, making reservations and bookings for transportation

FIRST USE 9-8-2014; IN COMMERCE 9-8-2014

CLASS 41: Providing information on entertainment, sporting, and cultural events and venues, amusements parks, tourist attractions, and recreational activities; ticket reservation and booking services for entertainment, sporting, and cultural events and venues, amusement parks, tourist attractions, and recreational services

FIRST USE 9-8-2014; IN COMMERCE 9-8-2014

CLASS 43: Making hotel reservations for others; providing a website featuring information in the field of hotels and temporary accommodations for travelers; providing personalized information about hotels and temporary accommodations for travel via the Internet

FIRST USE 9-8-2014; IN COMMERCE 9-8-2014

The color(s) blue, silver, red and yellow is/are claimed as a feature of the mark.

The mark consists of the word "SOUTHWEST" in blue, positioned to the left of a stylized silver heart with blue, red, and yellow bands running diagonally starting from the top right.

OWNER OF U.S. REG. NO. 2623807, 4266623, 3129737

SEC.2(F)

SER. NO. 87-052,854, FILED 05-27-2016
JESSIC ELLINGER FATHY, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

EXHIBIT N

08-Nov-2017

Dear Website Owner:

I am an attorney for Southwest Airlines Co. ("Southwest"), and I am authorized to write this letter on its behalf.

It has come to Southwest's attention that you are using Southwest's proprietary and trademarked names and logos in connection with your business. This is misappropriation of Southwest's property, an infringement upon Southwest's proprietary rights, and is confusing and misleading to Southwest's customers.

This letter constitutes a demand for you, including, but not limited to, your agents, affiliates, and employees, to cease and desist from using, in any way, Southwest's trademarks and logos and otherwise using Southwest's intellectual property, proprietary images and information and advertising without Southwest's express written consent ("Cease and Desist").

<http://swmonkey.com/>

In light of the foregoing, please be advised that should you fail to immediately Cease and Desist, Southwest will vigorously pursue all remedies and actions available, including, but not limited to, injunctive relief, and Southwest will seek recoupment of all expenses associated with such actions, including attorneys' fees and costs. Of course, Southwest would prefer to not be forced to take such measures, however, if it is so compelled, then Southwest will protect its interests to the fullest extent of the law. Finally, please be advised that Southwest will continue to monitor such improper activities, and if you continue, in any way, to use Southwest's intellectual property, Southwest will immediately institute all legal remedies available to it.

Within seven (7) days of receipt of this letter, kindly confirm by written correspondence that you will immediately Cease and Desist, and will otherwise fully comply with the demands made herein. Please let me know if you have any questions and kindly direct any future communications regarding this matter to my attention.

Regards,

SOUTHWEST AIRLINES CO.

Meredith Henchey
Senior Attorney

EXHIBIT O



Terms & Conditions

Last modified: April 4, 2017

These Terms & Conditions ("Terms") set forth a legally binding agreement between you and Southwest Airlines Co. ("Southwest," "we," or "us"), and govern your use of and access to www.southwest.com, www.swabiz.com, and any other websites, mobile and other applications, or services that post a link to these Terms (each individually a "Site" and collectively, the "Sites") and the information, features, content, and services that we own, control, or make available through the Sites (collectively, with the Sites, the "Service") whether as a guest or a registered user.

By using the Service or by clicking accept or agree to these Terms when this option is made available to you, you accept these Terms and the Service's [Privacy Policy](#), and consent to the collection and use of your data in accordance with the [Privacy Policy](#). The Terms may be revised and updated by us from time to time without notice to you. All changes are effective immediately when we post them. Your continued use of the Sites is your acceptance of the revised and updated Terms. You can review the most current version of the Terms & Conditions agreement at any time at <http://www.southwest.com/html/about-southwest/terms-and-conditions/index.html>. If you do not agree to any of these Terms, please do not use or access our Service.

In some instances, both these Terms and separate terms and conditions will apply, including without limitation, transportation of passengers, baggage, and cargo by Southwest Airlines® and its affiliates is subject to the terms & conditions contained in Southwest's [Contract of Carriage](#), terms and conditions printed on or in a ticket jacket or an e-Ticket receipt, in any published schedule, or any other separate terms (collectively "Additional Terms"). By using the Service, purchasing a ticket, or accepting transportation, you agree to be bound by such Additional Terms. To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless they expressly state otherwise.

The Service is offered and available to individuals who are 13 years of age or older. By using the Service, you represent and warrant that you are 13 years of age or older. If you do not meet this requirement, you must not access or use the Service and should not send any information about yourself to us through the Service.

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Assessing the Service

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You are responsible for:

Making all arrangements necessary for you to have access to the Service.

Ensuring that all persons who access the Service through your internet connection are aware of these Terms and comply with them.

Ensuring that using our Services on mobile devices does not distract you or prevent you from obeying traffic or safety laws.

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If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Service or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or

record your password or other personal information. Similarly, you are responsible for protecting your confirmation codes, e-ticket numbers, and other record locators from unauthorized users.

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You agree that you will not:

- (i) copy, display, distribute, download, license, modify, publish, re-post, reproduce, reuse, sell, transmit, or use the Service or Company Information to create a derivative work
- (ii) use the Service or Company Information for any commercial purpose, with the exception of authorized Southwest travel agents/agencies;
- (iii) use the Service or Company Information for any political purpose;
- (iv) engage in any activity in connection with the Service or Company Information that is libelous, slanderous, defamatory, fraudulent, unlawful, false or misleading, harmful, tortious, vulgar, invasive of another's privacy, sexually explicit, offensive, obscene, profane, violent, threatening, harassing, abusive, hateful, or otherwise inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
- (v) harvest any information from the Service;
- (vi) copy, derive, edit, translate, decompile, reverse engineer, modify, use, or reproduce any code or source relating to the Service including without limitation, any service or product Southwest offers;
- (vii) modify, re-render, frame, mirror, truncate, add to, inject, filter or change the order of the information contained on any page of the Service, including, without limitation, by any way of reproducing any web pages or Company Information on any other website without our express written permission;
- (viii) interfere with the proper operation of or any security measure used by the Service;
- (ix) infringe any intellectual property or other right of any third party;
- (x) use the Company Information in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you;
- (xi) use a false email address or other identifying information, impersonate or misrepresent any person or entity, or your affiliation with any person or entity, or misrepresent, mislead, or omit as to the origin or source of any material
- (xii) use the Service or any Company Information to make any speculative, fraudulent, or false reservation or any reservation in anticipation of demand;
- (xiii) cause to appear any pop-up, pop-under, exit windows, expanding buttons, banners advertisement, or anything else which minimizes, covers, or otherwise inhibits the full display of the Service;
- (xiv) use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information;
- (xv) use the Service in any way which depletes web infrastructural resources, slows the transferring or loading of any web page, or interferes with the normal operation of the Sites;
- (xvi) upload or transmit to the Service any device, software, program, or file that may damage the operation of any computer or the Service, including without limitation, viruses or corrupt files;
- (xvii) disguise the origin of information transmitted to, from, or through the Service;
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- (xix) otherwise violate these Terms or any applicable Additional Terms.

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You may not engage in any conduct that is, or that Southwest deems to be, in violation of the Terms.

Your Privacy

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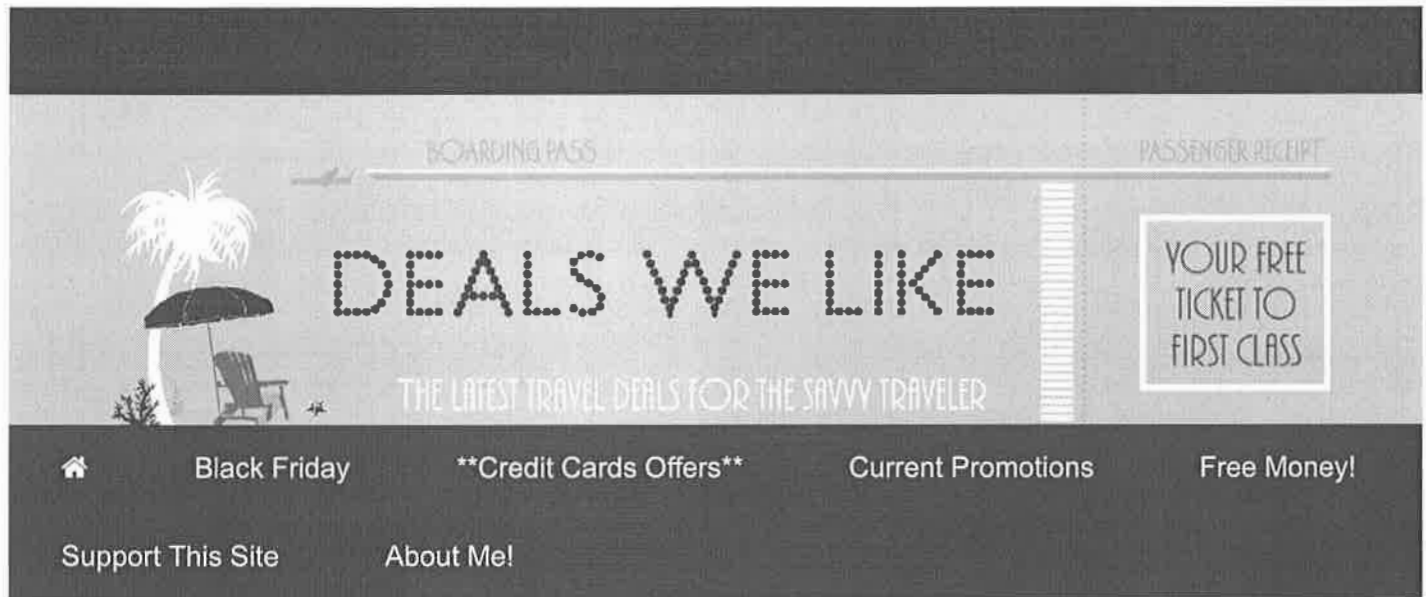
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EXHIBIT Q



Automatic Notifications when a Southwest Flight Drops in Price!

November 6, 2017 by Deals We Like 6 Comments

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Southwest is one of my favorite airlines since they allow you to get a difference if the price drops after you have booked your ticket. This is for both paid fares and flights booked with points! The process is really simple and takes no more than a minute or two. Here are the two scenarios on how you will get the fare difference back:

- **Paid Flight:** If you paid for your flight you will receive a voucher for the difference in fare price to be used one year from the date the flight was originally purchased (NOT the date the change process took place). This voucher is non-transferable and can only be used for the same passenger the original flight was booked for. The voucher will be tied to the confirmation number of the original flight. There is NO fee for this.
- **Using Points:** If you booked your flight using points, the difference in points will go back into your account immediately. Although, due to recent changes in Southwest's booking reservation system, I suggest canceling the flight (the points go straight back into your account) and then re-booking. This will keep your reservation refundable. I love using points for Southwest flights!

While this is a huge perk with Southwest (since you do not need to worry about booking during the lowest price ever), they will not automatically re-price your ticket for you, you will need to manually check out your Southwest flight price on a daily basis.

manually change/rebook your flight to save the money, Southwest Monkey will not do it for you. And since prices can change often, you'll want to make the update as quickly as possible to ensure to get that cheaper price.

There is a charge for the service – \$3 per alert, but you'll only pay IF they are able to save you \$10 or more on your flight. The site states that they check Southwest prices daily, so the chances of you saving money is incredibly high, especially during a fare sale. I personally have not yet used this site yet as I actually do not have any Southwest sites booked at the moment (gasp!).



To get full step-by-step directions on how you get your money/points back, make sure to read this post **"If a Southwest Flight Goes Down in Price..."**



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Comments



J says:

November 6, 2017 at 11:57 am

This probably won't last long as WN cracks down on these types of sites/tools

Reply
BoardingArea



S says:

November 6, 2017 at 6:50 pm

That is so true. You can make your own thou..

Reply

Christopher says:

You do realize that when these sites pop up that Southwest (Legal Dept) is pretty quick about sending cease and desist letters the shut them down. Especially ones like this that try a different charge for this type of service. Mostly likely won't last the week.....

Reply



dealswelike says:
November 6, 2017 at 9:51 pm

@Christopher – Yeah, I know. I did advise the owner of the site, but they still asked me if I'd post about it.

Reply



AutoSlash says:
November 8, 2017 at 12:04 pm

I think it depends on whether the author is scraping the prices using an automated process, or is doing it by hand. I think WN's TOS forbids any sort of scraping, but if someone were to hand-check the prices... Don't know how scalable that is, but it is theoretically possible.

Reply



Miles says:
November 7, 2017 at 12:54 pm

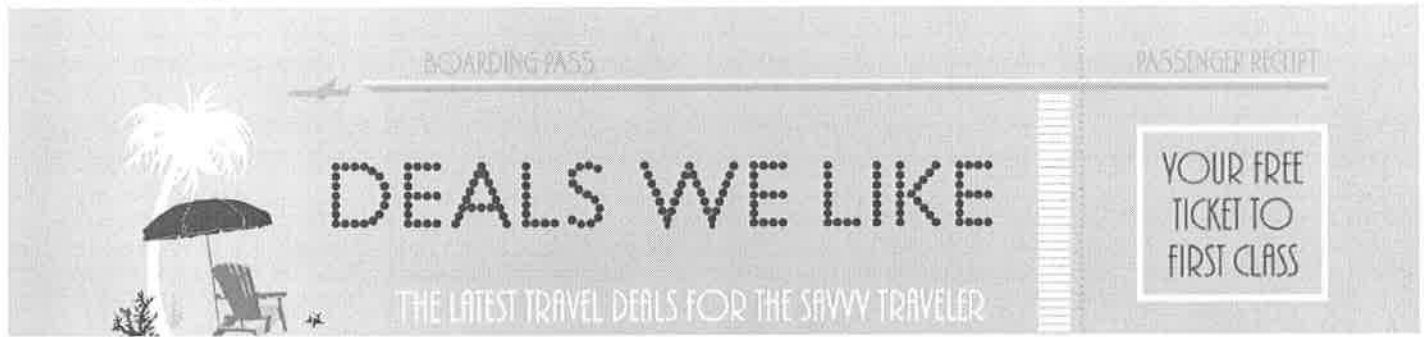
Dang! For the first time in living memory, I have no SWA flights scheduled.

Maybe we need a contest, to see who can guess closest as to when the monkey site is forced down by SWA.

Reply

EXHIBIT R

BoardingArea



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No More Automatic Notifications when a Southwest Flight Drops in Price

November 22, 2017 by Deals We Like 5 Comments

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If you follow this blog often, you know that I am a huge Southwest fan. One of my favorite reasons for loving Southwest is that if a flight drops in price after you've booked your ticket, you can get the difference back! This is for both paid fares and flights booked with points. While this is a great perk, it requires you (the traveler) to check the fare price daily and re-book it – Southwest will not automatically re-price your ticket for you.

To make the process simple, the site **Southwest Monkey** created a service that will do the leg work for you. I initially wrote about this site a few weeks ago after the creators contacted me and asked me to write about it. There is a \$3 charge for this service to check your flight price daily and text you if your light decreases in price. You only pay, however, IF they are able to save you \$10 or more. A win-win for everyone if you aren't one to constantly check for a price decrease for your upcoming flights.



Unfortunately, a few days after I wrote the post and the site started to receive some traction, Southwest Monkey received a cease and desist letter from Southwest. I am not surprised as this has happened to many other similar sites in the past. Even with a cease and desist they still continued with business as usual. Then a few days later (yesterday to be exact) they contacted me letting me know that they ultimately decided to shut down after meeting with a lawyer. With that being said, they still really want to make this work and will try to get something together that is not against Southwest's terms.

While I personally do not understand why Southwest is so against these sites, I am not a lawyer. In my opinion, they are providing a service that any Southwest traveler can do themselves, there really isn't anything unethical about it. It is similar to the award booking services. These award booking services are able to find flight availability using points/miles that any traveler could find on their own (but they just might not feel like doing the leg work or do not even know how to go about finding availability). The information is publicly available, just like Southwest's flight prices are publicly available. There is no loophole to finding these discounted flights, it just requires the traveler to actually do the work. Instead of doing the work themselves, people prefer to pay a service to find information that is publicly available.

Information on how you get the fare difference back:

- **Paid Flight:** If you paid for your flight you will receive a voucher for the difference in fare price to be used one year from the date the flight was originally purchased (NOT the date the change process took place). This voucher is non-transferable and can only be used for the same passenger the original flight was booked for. The voucher will be tied to the confirmation number of the original flight. There is NO fee for this.
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To get full step-by-step directions on how you get your money/points back, make sure to read this post "**If a Southwest Flight Goes Down in Price...**"

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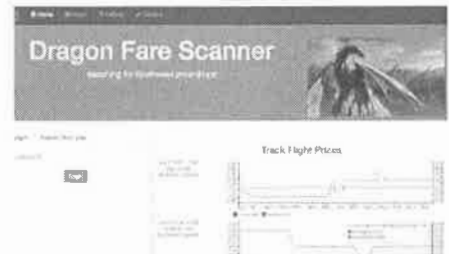
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Jeff says:
November 22, 2017 at 8:09 pm

How do you not understand why Southwest is against these sites? Really?

Southwest offers the ability to re-fare as a perk. And a great one it is. But if it becomes unprofitable because of someone else's app – which they are making money off of, btw – Southwest may not be able to offer that perk any longer. It's common sense that they work to put an end to it.

This is not unlike people complaining about Southwest not tracking our TTFs for us. That is a profit source for them and the perk of re-faring comes with that caveat. This is a two-edged sword.

I keep my records for TTFs religiously. And I check frequently – manually – to re-fare if possible. Automation for either of these will hasten the end for these perks.

Reply



dealswelike says:

November 22, 2017 at 8:58 pm

@Jeff – I see both sides. I also think that more people might book with Southwest once they realize that they can get their fare re-priced easily, so these types of sites might bring people to Southwest.

Reply



dawn says:

November 22, 2017 at 8:57 pm

I agree. Southwest is already good to fliers on so many levels. I am glad this site got shut down, and was surprised you even promoted it after a similar one got shut down not too long ago.

Reply



dealswelike says:

November 22, 2017 at 9:00 pm

@dawn – When I found out about this site I actually told the founder that I would not promote it without his permission. I explained that similar sites have been shut down in the past, sent him direct links to those sites, and told him that within a few days of me writing it I can almost

Reply



Benji says:

November 23, 2017 at 5:57 am

How is it illegal anyways? What you can't access their website or something without their permission?

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About Jen



My passion (and obsession!) for travel deals and points started over nine years ago the day I graduated college and took a job in management consulting. I'd spend every Monday through

Thursday hotel hopping and embarking on long plane rides just to earn the extra points and miles. Since I was traveling all the time I decided that I was really going to take advantage of the points and miles game... *Learn more about Jen »*

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EXHIBIT S

NOT GONNA FLY

How Southwest Airlines kills startups that monitor its prices

R.I.P., SWMonkey.

Aaron Gordon
DEC—01—2017 10:01AM EST

About two months ago, the 27-year-old Microsoft engineer Pavel Yurevich was booking a flight on Southwest Airlines — something he often does — when he got an idea. Southwest does not charge so-called change fees, which means if you book a flight and then the price drops, you can re-book the flight for the lower price without penalty. This requires checking the fares constantly, however. There has to be a better way, Yurevich thought, in the stereotypical entrepreneur manner.

Yurevich called his former colleague, a coder named Chase Roberts who had experience building scrapers, or programs that pull data from websites. In college at Brigham Young University, Roberts built an app called Lunchbox that scraped the university's events page for key phrases like "free pizza" to alert students to events with free food (one student called the app "nothing but incredible" in the campus newspaper).

Roberts loved the idea, but the pair wanted to see if there was a market for the service, for which they were hoping to charge customers \$3 if the fare dropped by \$10 or more. That's when they learned they weren't the first to have this idea.

In February 2016, Chris Lauinger, a quantitative researcher, created a tool called Dragon Fare Scanner that scraped Southwest fares and published them in close to

real time, with the added benefit of alerting you if the price dropped on a flight you booked. Unlike other airlines, Southwest does not allow travel websites like Kayak and Expedia to publish its fares, so the travel blogosphere loved it. But within a few days of getting press, Lauinger received a cease-and-desist letter from Southwest. "Given legal concerns," Lauinger wrote on his website, "the web app has been taken down."

Dragon Fare Scanner wasn't even the first automated service to face the ire of Southwest's legal department. Around 2006 and 2007, a spate of automated check-in services including BoardFirst.com and LoveCheckIn.org popped up, guaranteeing users coveted first-come, first-served A-group boarding slots. Southwest sued both apps and forced them to discontinue service.

By the time Yurevich and Roberts learned about Southwest's penchant for cease-and-desists, they were already committed to the idea. "Maybe they [Dragon Fare Scanner] just got really intimidated by Southwest," Yurevich remembered thinking. "But we won't."

"To put it simply, you should stop."— A *cease and desist letter from Southwest's legal department*

On November 6, a travel blog called Deals We Like posted about SWMonkey under the headline "Automatic Notifications when a Southwest Flight Drops in Price!" — an identical headline to the one almost two years prior about Dragon Fare Scanner. About 40 people signed up for the service, which convinced the pair the business was viable.

Two days later, they received a cease and desist email from Southwest, which stated that SWMonkey was "using Southwest's proprietary and trademarked names and logos" and gave them seven days to fix it.

Yurevich and Roberts figured it was a bluff. Nowhere on their site did they use trademarked material, and the only direct reference to the airline was, they believed, under fair use ("save money on Southwest flights!"). Their images were all licensed via Creative Commons. Just to be safe, they photoshopped the company's logo out of the tail fin of one of the images and added a disclaimer at the bottom stating "SWMonkey is not affiliated with Southwest Airlines or any of its partners in any way." Not good enough. Two days after that, they received another cease-and-desist from a different lawyer at Southwest. This one pertained not to intellectual property, but to Southwest.com's terms and conditions which explicitly forbid using the information on Southwest.com "for or in connection with offering any third party product or service not authorized or approved by Southwest" or using any kind of automated crawler to access the site. It also made vague references to the Computer Fraud and Abuse Act (CFAA), the notorious anti-hacking law that has been widely panned as "the worst law

in technology" due to its ridiculously broad reach. "To put it simply," the letter summarized, "you should stop."

The CFAA was supposed to be about preventing "malicious hacking" but is now deployed to prevent competition, said Charles Duan, director of the Patent Reform Project at Public Knowledge. In the case *Power Ventures v. Facebook*, the CFAA prevented users from gathering their own data and leaving Facebook's platform. SWMonkey's situation was similar, Duan said, because "by disallowing scraping of prices, Southwest makes it more difficult for travelers to compare prices against other airlines."

On principle, Yurevich and Roberts believed they were in the right. "We, as consumers, don't have the power to write our own terms and conditions and so we end up agreeing to whatever everyone throws at us," Roberts said, without any ability to stipulate what companies do with *our* data. But after consulting with their lawyer, the two entrepreneurs came to the conclusion that they were, in the end, no different from the other startups. If they pressed on, Southwest would file suit in Dallas, and the cost of flying to Texas — Yurevich is in Washington and Roberts is in Utah — would be just the start of the expenses they would incur. Even *if* they managed to somehow pull off the long-odds victory in court and win the right to keep their business active, they still didn't know for sure how profitable it would be.

Two weeks after launching, Yurevich and Roberts put up a blog post announcing the end of SWMonkey. "In the couple weeks that we were on-line, we were able to save customers more than 43,000 points and \$550 dollars, and have made \$45," they wrote. "Because our \$45 will not go very far in fighting litigation in federal court in Dallas, we have decided to save ourselves the headache and have shut down the service."

That's one last battle they are unwilling to concede, however. Southwest is now demanding the founders remove the site entirely even though it is now merely a landing page with a short and cheeky FAQ. "Southwest has no right to decide who can and can't publish information on the Internet," they wrote in a blog post this week. On this front, at least, they stand a chance. "That's pretty remarkable," Duan said after reading the latest cease and desist. "Off the top of my head I can't see any reason why they would be required to take down the site."

EXHIBIT T

Richard Juang

From: James Sheppard <James.Sheppard@wnco.com>
Sent: Friday, November 10, 2017 3:53 PM
To: info@swmonkey.com
Subject: Cease & Desist - Southwest Airlines Legal Notice

To Whom It May Concern:

I am an Attorney in the General Counsel Department at Southwest Airlines Co. ("Southwest"). It has come to our attention that you developed a website or application called "Southwest Monkey" that automates searches on Southwest.com. As you may know, the use of Southwest's services and websites is governed by the Terms and Conditions, which specifically prohibits the following activity:

- "[Y]ou will not use the Service [i.e. www.southwest.com] for or in connection with offering any third party product or service not authorized or approved by Southwest."
- "You will not . . . use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information."

To put it simply, you should stop. To put it in more legal terms, Southwest demands that you immediately cease and desist from (1) extracting or scraping Southwest's flight and fare information from its proprietary servers and websites; and (2) publishing this information on the Southwest Monkey website, through related web applications, or elsewhere.

There are at least three reasons why you should comply with this cease and desist letter.. First, as mentioned above, the Terms and Conditions specifically prohibit activities like fare-scraping or spider programs. Second, Southwest has successfully litigated against fare-scraping companies in cases like *Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004). Third, fare-scraping websites or programs like Southwest Monkey also violate federal laws such as the Computer Fraud and Abuse Act in 18 U.S.C. § 1030.

We hope you appreciate that Southwest may pursue formal legal action to recover damages for and to stop the unauthorized use of its website. We would request that you immediately cease and desist from using Southwest's website in violation of the Terms and Conditions.

There should also be no delay in your compliance with our demands in this letter. We would expect it done immediately – but no later than Wednesday, November 15, 2017.

James Sheppard
Attorney – General Counsel Department
2702 Love Field Drive, HDQ-4GC
Dallas, Texas 75235-1611
(214) 792-5354
James.Sheppard@wnco.com

Southwest 

EXHIBIT U

Richard Juang

From: James Sheppard <James.Sheppard@wnco.com>
Sent: Wednesday, November 15, 2017 4:41 PM
To: info@swmonkey.com
Subject: RE: Cease & Desist - Southwest Airlines Legal Notice

To Whom It May Concern:

We are surprised and disappointed that you continue to maintain the Southwest Monkey website in violation our terms and conditions. Rather, based upon our research, it appears that you have continued to update and revise the website – rather than take it down.

This is a second request that you comply with our cease and desist demand (below). We take this issue very seriously and will pursue litigation against you and your company if you fail to comply. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004); *Southwest Airlines Co. v. Infare Solutions, et al.*, Case No. 3:10-cv-01674 (N.D. Tex.); *Southwest Airlines Co. v. LUVCheckin.org, et al.*, Case No. 3:07-cv-1883 (N.D. Tex.); *Southwest Airlines Co. v. SW Software Development, LLC*, Case No. 3:12-cv-00591 (N.D. Tex). These are just a sample of the federal lawsuits filed by Southwest in Texas to protect against violations of its terms and conditions, among other issues. Given the legal precedent in our favor (and your website's obvious violation), we trust that you will quickly comply with our demands – unless you wish to litigate this issue in a Texas federal court.

Regards,

James Sheppard

From: James Sheppard
Sent: Friday, November 10, 2017 3:53 PM
To: 'info@swmonkey.com'
Subject: Cease & Desist - Southwest Airlines Legal Notice

To Whom It May Concern:

I am an Attorney in the General Counsel Department at Southwest Airlines Co. ("Southwest"). It has come to our attention that you developed a website or application called "Southwest Monkey" that automates searches on Southwest.com. As you may know, the use of Southwest's services and websites is governed by the Terms and Conditions, which specifically prohibits the following activity:

- "[Y]ou will not use the Service [i.e. www.southwest.com] for or in connection with offering any third party product or service not authorized or approved by Southwest."
- "You will not . . . use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input information, store information, search, generate searches, or monitor any portion of the Service or Company information."

To put it simply, you should stop. To put it in more legal terms, Southwest demands that you immediately cease and desist from (1) extracting or scraping Southwest's flight and fare information from its proprietary servers and websites; and (2) publishing this information on the Southwest Monkey website, through related web applications, or elsewhere.

There are at least three reasons why you should comply with this cease and desist letter.. First, as mentioned above, the Terms and Conditions specifically prohibit activities like fare-scraping or spider programs. Second, Southwest has successfully litigated against fare-scraping companies in cases like *Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004). Third, fare-scraping websites or programs like Southwest Monkey also violate federal laws such as the Computer Fraud and Abuse Act in 18 U.S.C. § 1030.

We hope you appreciate that Southwest may pursue formal legal action to recover damages for and to stop the unauthorized use of its website. We would request that you immediately cease and desist from using Southwest's website in violation of the Terms and Conditions.

There should also be no delay in your compliance with our demands in this letter. We would expect it done immediately – but no later than Wednesday, November 15, 2017.

James Sheppard
Attorney – General Counsel Department
2702 Love Field Drive, HDQ-4GC
Dallas, Texas 75235-1611
(214) 792-5354
James.Sheppard@wnco.com

Southwest 

EXHIBIT V



Nov. 28 2017 - You can read Part II of this story [here](#).

Nov. 21 2017 - Update

In the couple weeks that we were on-line, we were able to save customers more than 43,000 points and \$550 dollars, and have made \$45. Southwest Airlines has sent us a number of cease and desist letters demanding that we shut down our website "immediately." Because our \$45 will not go very far in fighting litigation in federal court in Dallas, our lawyer has agreed that our best decision is to save ourselves the headache and shut down the service. Thank you all so much for all the support and encouragement over the last few weeks.

Best,
Chase & Pavel

Southwest Airlines is Intimidating our Startup.

Nov. 16 2017

A friend posed an interesting hypothetical to me once, "If libraries didn't exist? Would you be able to start one today?" I think we could safely answer "No", at least not without spending millions battling publishers in court. Such is the litigating society we live in, with companies big and small using the legal system to choke out the competition, or anyone else they may feel threatened by.

Several weeks ago Pavel and I started working on SWMonkey.com. The idea is super simple, when your Southwest Airlines' ticket price drops, we send you an email and you can rebook your ticket to save whatever the difference is. It took us longer than expected, but Pavel and I threw together a landing page with a form to capture email addresses and flight details and got it on

384
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st, we didn't even have any code written to automatically check flights; Pavel was going

to do it manually. We soon had a blog post from [Deals We Like](#), an airline deals blog, to [announce our launch](#). Our first day we had 40 flights submitted to be monitored! I'm used to launching a service or app and only getting two or three sign-ups on the first day, so this blew my expectations out of the water. I was excited and overwhelmed by the positive feedback from everyone. One of our first users sent me this email:



M [redacted] to SWMonkey

Nov 6

I am totally bummed I didnt think of this. I have been checking my own flights (and family's flights) everyday for the past year!

Sent from my iPhone

Finding ways to optimize your life by cutting out menial tasks is the core of innovation. And automating something so mundane as checking your flights is no different from using a washing machine to wash your clothes or a bread mixer to knead dough. The last few weeks I have been washing dishes by hand because my dishwasher has been broken. One night, as I was scrubbing away, the thought came to me, "This is ridiculous. Someone should invent a robot that does this for me." I quickly caught myself. "They already did. It's called a dishwasher..." When I finally fixed my dishwasher, I had a new appreciation for the robot that washes dishes on my behalf. And it may not take as long to check flights as it does to do dishes, but I was thrilled to see that we were providing a service that makes people's lives a little easier and a little better.

My excitement was about to run full speed into a cement wall. Two days later, we received a (form) email from legal@mm.southwest.com:

Dear Website Owner:

It has come to Southwest's attention that you are using Southwest's proprietary and trademarked names and logos in connection with your business. This is misappropriation of Southwest's property, an infringement upon Southwest's proprietary rights, and is confusing and misleading to Southwest's customers.

Within seven (7) days of receipt of this letter, kindly confirm by written correspondence that you will immediately Cease and Desist, and will otherwise fully comply with the demands made herein...

384
Shares

SOUTHWEST AIRLINES CO.
Meredith Henchey
Senior Attorney

Link to full email.

I opened up swmonkey.com and looked over our landing page. We do use an image of an airplane that said "southwest" on the side of it. We've since removed that image. Even so, Southwest didn't take the picture, it was a public domain image, licensed under [creative commons](https://creativecommons.org/licenses/by/4.0/). Also, let's be real for a moment. I refuse to believe that Southwest has done any sort of independent study proving that my use of that particular image, if that's even what they are talking about, "is confusing and misleading to Southwest's customers." Their letter is also remarkably unhelpful when it comes to resolving any issues. They never mention where or how I am infringing on their trademarks or IP. Obviously, this letter is an intimidation tactic. Their goal isn't to help me comply, it's to get us to take down SWMonkey.

I figure I have 7 days before I have to start thinking about this, and went back to work.

Two days later we have flight checking mostly automated. Pavel and I are feeling really optimistic about progress when we receive an email from James Sheppard:

To Whom It May Concern:

I am an Attorney in the General Counsel Department at Southwest Airlines Co. ("Southwest"). It has come to our attention that you developed a website or application called "Southwest Monkey" that automates searches on Southwest.com. As you may know, the use of Southwest's services and websites is governed by the Terms and Conditions, which specifically prohibits the following activity:

- "[Y]ou will not use the Service [i.e. www.southwest.com] for or in connection with offering any third party product or service not authorized or approved by Southwest."

- "You will not . . . use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, generate impressions or clicks, input

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information, store information, search, generate searches, or monitor any portion of the Service or Company information."

To put it simply, you should stop. To put it in more legal terms, Southwest demands that you immediately cease and desist from (1) extracting or scraping Southwest's flight and fare information from its proprietary servers and websites; and (2) publishing this information on the Southwest Monkey website, through related web applications, or elsewhere.

There should be a social media bar with icons for Facebook, Twitter, Email, Reddit, and LinkedIn. The text continues: "would expect it done immediately - but no later than Wednesday, November 15, 2017."

James Sheppard
Attorney - General Counsel Department

[Link to full email.](#)

I have to admit, this rattled my cage a little bit; which is the whole point, I guess. The problem I see with their argument is that they are making this information public. To restrict someone from accessing public information is a violation of our basic rights. Carl Wisoff, in a [similar court case](#), addresses this same issue, "To choke off speech and the precursor of speech, the gathering of facts and the analysis of information, is a dangerous path down which we should not go." If Southwest is going to make data public, then anyone should be able to access or monitor that data.

We aren't going to be intimidated by this. Everyone has a right to access public data. And we believe that whether you are accessing that data by typing in a URL in a web browser, through a CURL request, an RSS feed, a cached copy, or having someone read it to you aloud, does not change your right to access public data.

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If Southwest Airlines' Transparency Campaign is about being open and honest with customers and helping them find the lowest fares, they will stop trying to squash startups that are trying to assist customers in this same effort. We will continue for the time being and expect that Southwest will focus on helping customers find the best fares available, and so will we.

-Chase & Pavel

I am not a lawyer. These are all my own opinions and feelings. We have a lawyer that is looking into our case and will advise us on what our best course of action is.

Read Part II [Here.](#)

EXHIBIT W



Southwest Airlines is Intimidating our Startup - Part II

Nov. 28 2017

If you haven't yet, you can read part 1 of this story [here](#).

When we left off, I said we weren't ready to take down [SWMonkey](#) and we believed we weren't doing anything wrong. But, in the end, what Pavel and I believe doesn't really matter. What matters is whether we have a chance at winning in court. After consulting with our lawyer, we decided it was unlikely that we could get around Southwest's Terms and Conditions. Terms and conditions can be a gray area. In order for them to be enforceable by a court, they need to be both reasonable and discoverable. You can't just bury some terms and conditions at the bottom of your site claiming, "Anyone that visits this site agrees to pay us \$50," and then start demanding payment; that would be both unreasonable and not discoverable. Similarly, we were not aware of Southwest's terms and conditions when we started SWMonkey, but after receiving our second cease and desist letter, we could no longer claim ignorance. And although Pavel and I felt like their terms and conditions were unreasonable, a number of previous court rulings suggested otherwise. So rather than waste our time and money, we decided we would be better off to shut down the service and move on.

Pavel and I were discouraged for a while, but ultimately felt it was the best thing for us to do. To keep our customers and followers in the loop, I updated our landing page to remove the submission form and replaced it with a paragraph outlining that we are shutting down:

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Thank You!

In the couple weeks that we were on-line, we were able to save customers more than 43,000 points and \$550 dollars, and have made \$45. Southwest Airlines has sent us a number of cease and desist letters demanding that we shut down our website "immediately." Because our \$45 will not go very far in fighting litigation in federal court in Dallas, we have decided to save ourselves the headache and have shut down the service.

Thank you all so much for all the support and encouragement over the last few weeks.

Best,
Chase & Pavel

And rather than remove the FAQs, I updated some of the questions and answers with my own commentary:

Frequently Asked Questions

Is this legal?



What are you going to do with your \$45.00?



Are you guys working on anything else?



So how am I going to save money on my flights now?



Well, that's a tricky one. We did find someone who made [this open source tool](#) for checking your southwest flights yourself. But getting it setup does require a little bit of technical knowledge.

Pavel sent out a quick email to our existing users outlining that we had to shut down for legal reasons and that we weren't going to sell their info to Mormon missionaries or anything. We received a few regretful replies from users that were very disappointed that we had to close up shop. One user was so grateful that we saved him 11,000 points that he sent us \$15 for drinks!

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Pavel and I put everything behind us, used our earning to buy lunch, and started talking about the next project idea. We thought this was the end.

It was not.

On November 22nd, courtesy of James Sheppard at Southwest, we received our "Final Cease & Desist Letter":

...Southwest is surprised and disappointed that your clients are not willing to completely shut down the Website. It is not clear to Southwest why your clients are refusing to comply with our demand given the obvious legal risks here.

...But apparently, they have chosen to maintain a revised form of the Website which raises additional issues.

..Southwest will pursue formal legal action related to violation of it's Terms & Conditions unless your clients confirm in writing each of the following:

1. Their written agreement to comply with Southwest's Terms & Conditions;
2. Their agreement to cease operation of the Website and removal of all related information from the internet;
3. Their agreement to notify travel-related websites (i.e. Travel with Grant blog or Travel Zork) that the Website will be removed from the internet for violation of Southwest's Terms and Conditions;

We respectfully request that you provide Southwest with written confirmation related to the issues referenced above on or before Monday, November 27, 2017.

Read the full cease and desist letter [here](#).

We couldn't
not scrap



nothing but a historical remnant of a really great service, and the links and blog posts that remain on our site are certainly not illegal.

SWMonkey is nothing more than an informational page and Southwest just sent us a cease & desist letter demanding that we disappear. It seems to me that Southwest's only goal here is to

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limit our freedom of speech, because at this point, that's literally all we have. After reading and rereading their letter, I can't find a single allegation with any basis. "Obvious legal risks"! What obvious legal risks? We already disabled the service. They mention that the revised form of the site has issues, and imply that they can come after us for violating Texas criminal law, trespassing, civil conspiracy, and unjust enrichment. I would refute these claims by reminding them that not only are we not violating any Terms, we are not accessing the southwest.com website, and we are not even pursuing this as a commercial venture. We just felt that our users should know why a site that they trusted to share credit card and flight information with, has suddenly shut down their service.

Southwest also makes allegations that we are infringing on their trademarks. After discussion with our attorney, we are confident that we are not (how could anyone looking at our web site think we are affiliated with Southwest?). I don't know why Southwest is so bent on us shutting everything down. Maybe they think that it will deter others from scraping their site? Maybe they don't want to appear to be the bad guys and we are tainting their image? I have no idea. But for some reason, shutting down the service isn't enough for these guys; they want to see SWMonkey eradicated from the Internet.

Our lawyer replied to James Sheppard at Southwest today. This quote sums it up nicely:

Given that swmonkey.com is no longer being used to offer any commercial service, we are perplexed as to why Southwest is insisting that the "entire website" be taken down. It would appear that Southwest is merely trying to use the legal system to curtail [swmonkey.com's] free speech rights.

Read the full letter [here](#).

Southwest has no right to decide who can and can't publish information on the Internet. Until Southwest can be transparent with us and offer up a legitimate reason why we should not be allowed to host an informational website, SWMonkey, the service that no longer helps people save money on their flights, is not going anywhere.

-Chase & Pavel

jane@example.com

Submit